

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NIC AKER,

Petitioner,

v.

CIV 05-1043 MV/LAM

JAMES JANECKA, WARDEN,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION (DOC. 26)**

On September 27, 2006, the Magistrate Judge assigned to this case filed her *Proposed Findings and Recommended Disposition* (hereinafter "PF&RD") (Doc. 26) recommending that Petitioner's *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody* (Doc. 1) be denied and this case be dismissed with prejudice. On October 10, 2006, Petitioner timely filed objections to the proposed findings and recommended disposition. Having reviewed the proposed findings and recommended disposition and Mr. Aker's objections, the Court has determined that it will adopt the *Proposed Findings and Recommended Disposition* (Doc. 26), grant Respondent's *Motion to Dismiss* (Doc. 12), dismiss Petitioner's *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody* (Doc. 1) and this case **with prejudice** by a final order entered concurrently with this order.

In *Petitioner's Reply to the Court's Proposed Findings and Recommended Disposition* (Doc. 27), Petitioner re-states his claims of a violation of his rights to due process, equal protection, effective assistance of counsel and allocution. Petitioner argues, *inter alia*, that the New Mexico Court of Appeals' holding, that the State's submission of *ex parte* letters was an error not warranting

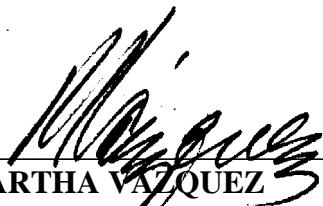
reversal,¹ was an error that requires reversal. Petitioner provides the Court with numerous case citations; however, Petitioner fails to provide evidence that would support his allegations of constitutional violations, *i.e.*, that the sentencing judge relied on the *ex parte* letters during sentencing, that he was prejudiced by the *ex parte* submissions, or that the sentencing was fundamentally unfair. As noted in the PF&RD, the state court's ruling did not result in a determination that was contrary to or an unreasonable application of established federal law nor a determination based on an unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d)(1) and (2). Petitioner's objections are without merit.

IT IS THEREFORE ORDERED that the *Proposed Findings and Recommended Disposition* (Doc. 26) are **ADOPTED** by the Court;

IT IS FURTHER ORDERED that Respondent's *Motion to Dismiss* (Doc. 12) is **GRANTED**;

IT IS FURTHER ORDERED that all of Petitioner's claims and this case be **DISMISSED WITH PREJUDICE** and that a final judgment be entered concurrently with this order.

IT IS SO ORDERED.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE

¹*State v. Aker*, 113 P.3d 384, 388 (N.M. Ct. App. 2005); *Answer, Doc. 14, Exhibit I* at 6.